

**Morro Bay Modernization Project
Visual Analysis of Full Enclosure
January 2, 2002**

Background

During the California Energy Commission's (CEC) proceeding to consider Duke Energy's application for the Morro Bay Modernization Project, several interested individuals and one agency expressed the opinion that Duke (the Applicant) should consider a fully enclosed facility.¹ The CEC subsequently requested that the Applicant evaluate the visual implications of a full enclosure and that it make that analysis available to the CEC staff for consideration in the Final Staff Assessment.² This submittal, including the attached KOP simulations and plan view, constitutes the Applicant's response to the requirement of the scheduling order.

Historical Perspective: Applicant's Proposal for Partial Enclosure

Minimizing the height and bulk of the new power plant is consistent with minimizing overall visual impact of the Morro Bay Power Plant Modernization Project. The applicant's early analyses of enclosure alternatives, briefly presented in the AFC, explained that a low profile, partially enclosed facility maximized views through the power plant site to the ocean and Morro Rock. This notion has been consistently reinforced by city leaders and the community at large, and is therefore recommended.

The Project, as described in the AFC, encloses all four of the gas turbines and both of the steam turbines in structures designed to minimize their height and bulk. Roofs are kept low by eliminating internal cranes required for equipment maintenance and removal. The roofs are also designed to be removable so that, when required, large portable cranes can be set up outside the enclosures for maintenance. The low-profile pipe rack is one of the design features of the applicant's proposal that also minimizes industrial height and bulk. The only remaining equipment to be considered for enclosure are the HRSGs and the central pipe rack. The enclosure for that equipment is the subject of this analysis.

Requests for Full Enclosure

As noted above, during the proceeding several interested individuals and one agency requested a more complete review of full enclosures. The Applicant specifically responded to the Coastal Commission Staff's issues in a letter dated November 20, 2001 and docketed with the CEC on November 28, 2001. The Applicant also conducted an additional review of the visual aspects of full enclosures. Applicant representatives met with the Executive Director of the Coastal Commission and his staff on December 5, 2001 to discuss the findings and simulations that are presented below. From the discussions at the meeting, the Applicant came away with two strong impressions: (1) this type and level of analysis was in line with what the CCC staff hoped the Applicant would produce and (2) the CCC staff came away from the meeting with a better

¹ California Coastal Commission letter to California Energy Commission, dated November 5, 2001.

² See Scheduling Order from CEC Committee, dated December 4, 2001.

understanding or how and why full enclosures (and their attendant higher stacks) would lead to a diminished, rather than enhanced, coastal viewshed. Before turning to our analysis, it is also important to review the community concerns, as expressed by elected officials and local citizens, about any design feature that would increase the bulk and height of the proposed facility.

Community Desires

Throughout the AFC preparation process over the past two years, we have heard from both City leaders as well as the general public that it is critical to minimize the height and bulk of the power plant. Views from the surrounding hillside residences of both the ocean and Morro Rock are highly valued. A sampling of quotes from various City meetings and resolutions are provided as examples of the City's position.

“The existing plant would be replaced with a new, state of the art facility, substantially smaller and lower profile than the existing plant.” (Staff Report to the Mayor and City Council. December 10, 1999.)

“Whereas, in November 2000, the voters of the community expressed their strong support for the removal of the existing plant and construction of a new, less obtrusive, more efficient, modern facility...” (City of Morro Bay. Resolution No. 22-01: *Resolution of the City Council of the City of Morro Bay, California*. Morro Bay, CA.)

“...and its replacement with a substantially smaller, less visually obtrusive facility.” (City of Morro Bay. Resolution No. 57-01: *Resolution Regarding Alternative Cooling Methods Proposed for MBPP*. Morro Bay, CA.)

“Council member Elliot stated one of the attractions of the modernization plan was the elimination of large building where the current plant stands.” (Aug. 13, 2001 City of Morro Bay Minutes – City Council Morro Bay, CA.)

“Vote YES on P and NO on Q if you want these benefits:

- Removal of stacks by 2004
- Improved views of residential neighborhoods
- More compact facility set back from waterfront
- Removal of 6 on-site oil tanks
- Removal of existing plant building by 2007”

(City of Morro Bay. October 2000. Morro Bay Crossroad: Measure P; Measure Q. Morro Bay, CA.)

“... today we received a letter from the Coastal Commission requesting analysis of this as well. It's not being included tonight because the comments at earlier workshops indicated a preference for minimizing the structure, and also because a fully enclosed plant would require higher stacks and probably re-siting on the property.” (City of Morro Bay Councilwoman Janice Peters, November 5, 2001 Visual Workshop)

“ I have no problem with the CEC analyzing enclosure. What I have a problem with is that it seems to me to be not what our residents indicated they wanted at the very beginning, which was less bulk and more view of the ocean and the Rock.” (Morro Bay City Council Member, November 13, 2001, Morro Bay City Council Meeting)

Siting a Fully Enclosed Facility

Full enclosure is far more complex than simply adding “a shell” around the proposed power plant. Many engineering factors come into play. Evaluating enclosure opportunities begins with the understanding of the available plot space to construct the plant, as shown on the following page. In the Applicant’s overall site plan a variety of parcels surround the actual Project area, including; the PG&E property (switchyard and transmission corridor), the RV park, Kaiser park, sensitive areas and buffers, dedicated parcels (marine and mammal facility) and the flood plain levees and berms. The remaining parcel for the modernized plant is a single odd shaped plot. The site is further constrained by the existing plant, the seawater return tunnels and the need to maintain operation of the existing plant. Taking all of this into account results in an optimized equipment arrangement for the available plot as depicted in the current design.

Two opportunities for full enclosure exist with the proposed Project plot plan and the optimized design:

- (1) Enclose each of the two power blocks (600 MW with 2 gas turbines, 2 HRSGs and 1 steam turbine) into a separate building, resulting in two structures with the pipe rack exposed down the center.
- (2) Place both power blocks and the pipe rack into a single large building

In both options, the full building height is required to accommodate the enclosed crane structures, and the consequent stack height increase would also be required. Therefore, this study assumes one large building, with all equipment enclosed,³ and provides the Applicant’s best sense of how an enclosure might work. Basic issues of constructability and site suitability have not been studied thoroughly and would require a far more detailed evaluation. Such a detailed study would also have to evaluate other factors such as maximum square footage, fire protection systems, personnel egress along with other basic constructability criteria.

Engineering, Permitting and Scheduling Issues

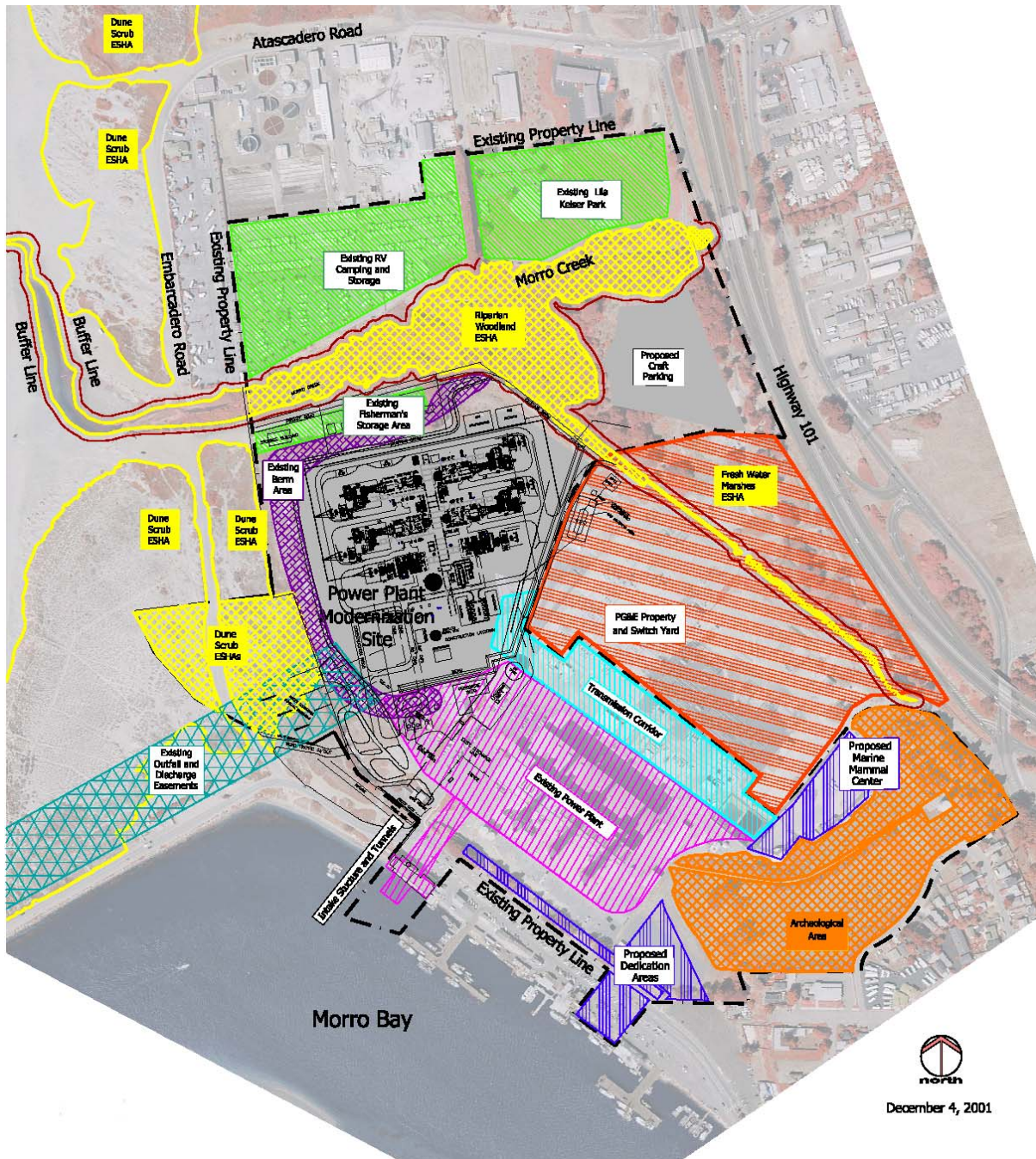
Full enclosure will impact several permits including air and land use permits. The increase of the plot area may also impact the placement of the transmission towers and lines. Further, engineering issues of earthquake design for the structure, bridge crane structures, and noise mitigation due to nature of the enclosure, would all have to be explored. Adding an enclosure of this magnitude would also significantly increase the number of craft-hours required for construction. This would increase traffic impacts and extend the overall construction schedule. An evaluation of a complete reconfiguration of the major equipment and the associated full enclosure may also become necessary. Full

³ This approach was also the stated preference in the Coastal Commission staff’s letter.

Visual Analysis of Full Enclosure of the MBPP

enclosure would delay the project for at least 9 months to one year, extend the overall construction schedule, and add significant cost to the Project.

Site Constraints Diagram



Description of Full Enclosure Proposal

If all of the engineering, layout, and scheduling factors could be resolved, a single full enclosure is likely to have the following characteristics, as shown on the following schematic site plan. The dimensions for the full enclosure proposal evaluated here are 620' deep x 550' wide x 130' high, as shown on the site plan following this discussion. However, these numbers are conceptual and may increase during a detailed study. The dropped roof on the east and west sides (left and right of the drawing) is 65' high and 105' deep (towards the center of the drawing). The four stacks would rise an additional 45 feet, from 145 feet to 190 feet. Steam turbine transformers (also in pink) would be relocated to the outside of the building for purposes of fire protection. The main electrical generation equipment is in white or gray and the rectilinear pipe racks are also in gray. Transmission lines are in green. Road access and some ancillary buildings are in orange.

The full enclosure would include all six turbines, four HRSGs and the four stacks up to the 130-foot level. The building height is required to contain the overhead bridge cranes used to access equipment on top of the HRSGs. The width and depth of the enclosure are necessitated by the equipment to be enclosed, plus the operational and maintenance access requirements.

Stack Height and Air Quality

The stack height would increase approximately 45 feet, from the proposed 145 foot height to approximately 190 feet in height, to ensure that maximum pollutant concentrations, both on Morro Rock and at other locations, are no higher than the levels indicated in the AFC modeling analysis. This stack height increase is required to mitigate the increased effects of building downwash caused by the enclosure.⁴

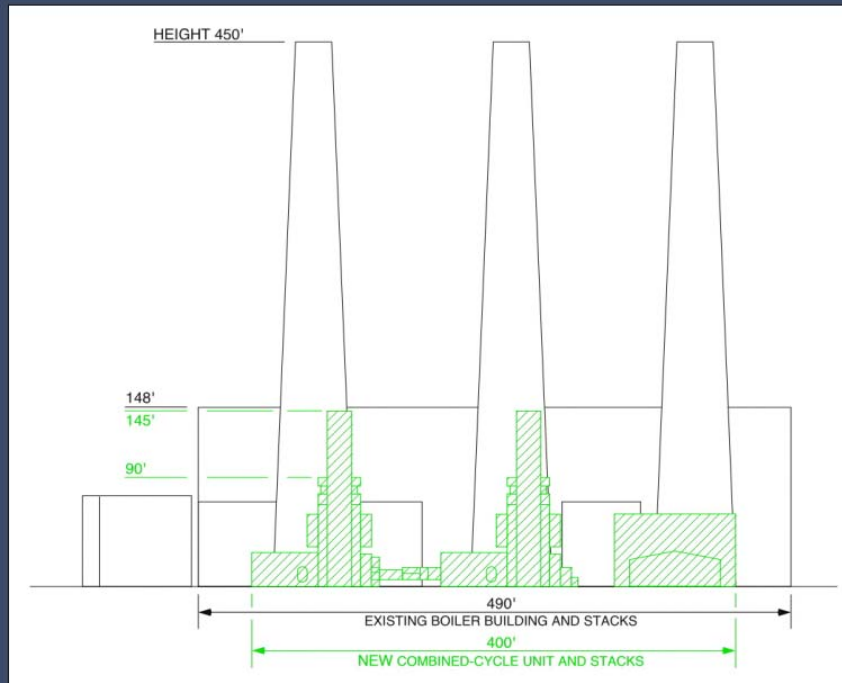
Evaluation of Visual Impacts of a Fully Enclosed Facility

The visual analysis of the single building enclosure is based on a set of six visual simulations from established Key Observation Points (KOPs), which follow this description. These visual simulations (which do include the three KOPs of highest concern to the Coastal Commission staff) start with the most recent three-dimensional computer model of the applicant's preferred Project which show partial enclosures as well as the City of Morro Bay's stated color preferences. The enclosure building is then placed over the image as a "wire frame" to depict the location, volume and shape. The advantage of the "wire frame" approach is that it equivocally establishes what views of the coast and ocean, if any, would be sacrificed with such an enclosure. The result is a comparison of full enclosure with the applicant's preferred Project.

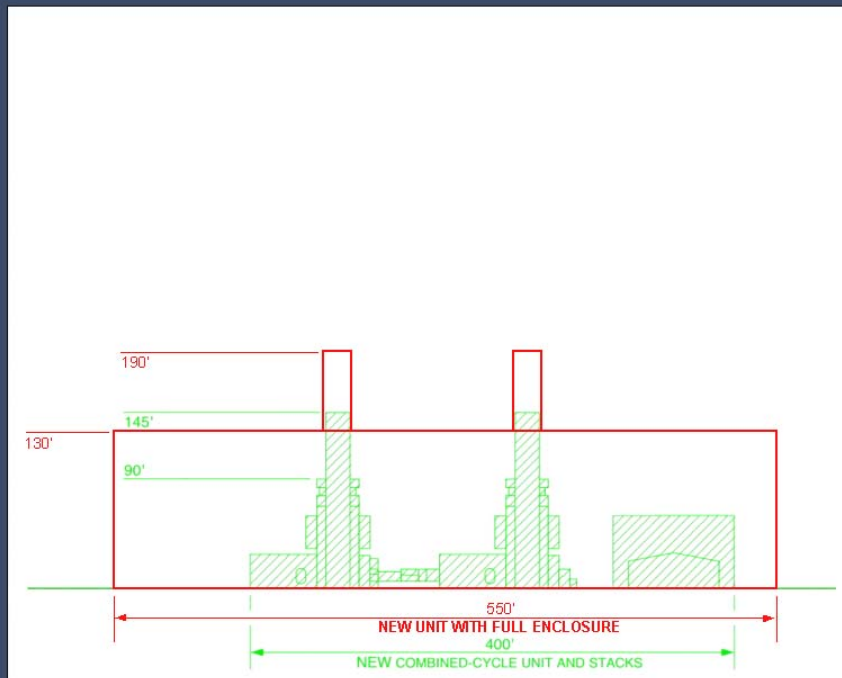
- KOP 5 View from Morro Strand Beach
- KOP 6 View from Morro Dunes Trailer Park
- KOP 7 Close Up view from Embarcadero Road
- KOP 8 View from Coleman Drive
- KOP 14 View from Sunset Plateau
- KOP 15 View From harbor Front Tract

⁴ Gary Rubenstein of Sierra Research Inc., air quality consultant for the Applicant.

Profile of Existing & Proposed Power Plant



Proposed Power Plant with Full Enclosure



Visual Analysis of Full Enclosure of the MBPP

The visual analysis compares the Project as proposed in the AFC, with the visual change incurred as a result of the addition of the full enclosure. Each KOP simulation was evaluated by a set of four criteria:

- Area occupied by the power plant and the enclosure
- Area penetrating skyline (extending above horizon)
- Horizontal field of view (width of area occupied by the power plant)
- Obstruction of features (Views of the Rock, Ocean, Beach or Distant hills that would otherwise be visible)

Visual Changes from Six Selected KOPs

KOP 5: View From Morro Strand Beach

Looking SE from end of Atascadero Road

This observation point is a public coastal access point. Activities include hiking, jogging, surfing, sunbathing, swimming, and walking. Partially obstructed views of the existing power plant are over the sand dunes.

- Large building mass is twice the height of hills in distance and approximately half the height of Morro Rock
- Expanded horizontal field of view is nearly all above skyline
- Stacks above enclosure are very evident above skyline

KOP 6: View from Morro Dunes Trailer Park

Looking SE from within trailer park

This KOP is from a privately owned trailer park and resort campground close to the northern side of MBPP property, separated by Morro Creek. The resort campground is used mainly by out-of-town visitors who use the coastal access of the campground to the beach and Morro Rock.

- Enclosure is mostly above skyline and dominates the view
- Stacks penetrate sky above enclosure
- Large wall would exceed height of plant materials for screening
- Enclosure could cast a shadow on to Morro Creek Environmentally Sensitive Habitat Area

KOP 7: Close-up view from Embarcadero Road

Looking ESE from south of Morro Creek

This is a scenic vista point and is a public coastal access point. Mainly local residents and fishermen use the unpaved public parking area. This is the future site of the Embarcadero road connection. This site provides a close range public view of the Project.

Visual Analysis of Full Enclosure of the MBPP

- Increase in horizontal field of view blocks views of coastal hills
- Enclosure rises above Project equipment, nearly twice the height of the surrounding hills and penetrates well into the skyline
- Increased stack height is most apparent from this near view as stacks rise into skyline
- Details of the structure would be visible from this perspective

KOP 8: View from Coleman Drive

Looking NE across inlet from Morro Rock

Local residents, visitors, and boaters coming into Morro Bay Harbor see this view. This is a full view of the MBPP property looking northeast from Coleman Drive at the base of Morro Rock.

- Enclosure would be the largest structure visible
- Enclosure increases the industrial bulk and horizontal field of view occupied by the power plant
- More of the distant hills would be obscured by the enclosure

KOP 14: View from Sunset Plateau

Looking SSW from vacant lot at end of Sunset Court

Panoramic views from Sunset Plateau include an expansive view of the ocean and the coastline to the north (not visible in image) as well as views directly onto the Project site. This neighborhood also overlooks Highway 1, which is visible in the middle ground.

- Horizontal field of view extends from base of Morro Rock to in front of the Sand Spit
- Views of ocean, beach, dunes and the sky to the left of Morro Rock become obscured
- Taller stacks rise into the skyline and exceed the height of the ridgeline to the left

KOP 15: View from Harbor Front Tract

Looking West down Radcliffe Street from Berwick Drive

Views from the Harbor Front Tract residential area include Morro Rock, the power plant, transmission towers, and the ocean. To the south are the harbor inlet and the northern tip of the sand spit. Residential structures in the area both frame views and obstruct potential panoramic views.

- Enclosure is the largest structure visible
- Horizontal field of view expands laterally towards Morro Rock
- The large enclosure building obscures views of the ocean and skyline throughout the field of view
- Stacks rise further into the skyline

Summary of Visual Effects of Full Enclosure

The Applicant's proposed project, as defined in the AFC, is smaller in height and bulk and occupies less of the coastal site than any fully enclosed alternative. The enclosure,

Visual Analysis of Full Enclosure of the MBPP

when evaluated against the visual criteria, consistently would cause *significant* negative visual effects. Specifically, the negative visual effects of enclosing the proposed project include;

- (1) a significant increase in the total area occupied by the power plant,
- (2) significant increase in the area penetrating (blocking) the skyline and/or obstructing other coastal features, and
- (3) significant increases in the horizontal field of view occupied by the power plant.

These findings are all inconsistent with the expressed desire of City of Morro Bay and its citizens to minimize the height and bulk of the facility. The full enclosures would have more negative environmental impacts than the current proposal.

Appendix 1: Referenced Letters

1. California Coastal Commission letter to California Energy Commission, dated November 5, 2001.
2. Duke Energy Letter to Peter Douglas, California Coastal Commission, dated November 20, 2001
3. Scheduling Order from CEC Committee, dated December 4, 2001

CALIFORNIA COASTAL COMMISSION

GRAY DAVIS, GOVERNOR

FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE (415) 804-5200
FAX (415) 804-5400



November 5, 2001

William J. Keese, Chairman and Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

RE: Duke Energy Morro Bay Power Plant Project - 00-AFC-12

Dear Mr. Keese:

I write regarding the California Energy Commission's (CEC) review of Duke Energy's Application for Certification for the Morro Bay Power Plant. Specifically, Coastal Commission staff is concerned about the adequacy of the CEC's staff review of potentially significant adverse impacts to visual resources in the Morro Bay area, especially at several key observation points (KOP).

Dan Chia of my staff raised this issue previously in a letter to you dated August 15, 2001. In response, your staff verbally informed him that the Committee would not require an analysis of a fully enclosed facility. Based on my review of the significant adverse visual impacts caused by the proposed plant at KOP 5 (Morro Strand State Beach) and 6 (Morro Dunes Trailer Park Resort Campground), and likely other KOPs, we again respectfully request that you direct your staff to analyze a fully-enclosed facility or other innovative visual shields or screens that block from view, to the maximum extent feasible, the industrial appearance and character of the power plant, much like the existing power plant. As examples, I refer you to the Metcalf Energy Center Power Plant Project (a fully enclosed facility adjacent to Highway 101, an arguably less scenic highway than Highway 1) and the Russell City Energy Center Power Plant Project (incorporating an innovative "wave" visual screen).

The Preliminary Staff Assessment (PSA), released in May 2001, for the above project modestly describes the Morro Bay area as represented by "...diverse natural features, including the ocean and long beaches, bay, sand spit, wetlands, and harbor areas" (page 4.11-9). When designating Morro Bay as California's first State Estuary in 1994, the Governor more generously described Morro Bay and its watershed as "...one of the state's rare natural treasures." The City of Morro Bay's Local Coastal Program designates Morro Rock and Atascadero (Morro Strand) State Beach as visually significant and requires that industrial development to be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with and subordinate to the character of the surrounding areas (CLUP Policy 12.11). To be sure, the Morro Bay and surrounding viewsheds qualify for full protection under section 30251 of the Coastal Act. That section states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan [Plan] prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Morro Bay State Park and Morro Strand State Beach are included in this Plan. According to the Plan, the former is an area that, "...if properly managed, would assure that adequate examples of California's coastal landscape heritage are protected. These areas contain some of the best of the coast's scenic qualities, the better examples of all biotic communities native to the coast, and a representative display of typical coastal geologic landforms" (1972).

In its analysis of visual impacts, the PSA finds that "...from most viewing areas of the existing power plant and proposed project site, the proposed project would result in an overall long-term improvement in visual quality." Commission staff recognizes the substantial improvement in visual quality that will result after the demolition of the existing plant. However, the PSA also finds that the proposed project has the potential to cause long-term significant adverse visual impacts from viewing areas at KOP 5 and 6. Commission staff also believes significant adverse visual impacts will result at Morro Creek at Embarcadero Road (KOP 7). Nighttime lighting requirements will also likely degrade visual quality (when the PSA was released, no lighting plan had been provided to the CEC by Duke).

To reduce these impacts to levels of insignificance, the PSA recommends mitigation measures (e.g., architectural/color treatment, more effective landscape screening) that have yet to be developed or submitted for public review. Therefore, the Coastal Commission and the public will not have an opportunity to review the proposed mitigation and assess its effectiveness before the project is certified by the CEC. We already question the effectiveness of condition VIS-2 for its only requires that "Trees and other vegetation must be strategically placed and of sufficient density to screen the sound wall and *most lower structural forms (not the upper portions of the stacks or the upper piping)* [emphasis added]. Moreover, based on photo simulations in the PSA of proposed vegetative screening, implementation of these mitigation measures is not likely to substantially reduce the visual impacts of the plant situated in a highly scenic area deserving of the maximum protection. According to the PSA, compared to the existing plant—where night lighting is of low intensity (due to its full-enclosure)—the proposed plant will "noticeably increase visible ambient night lighting." With proper implementation of condition VIS-3 (a lighting plan), the PSA concludes that lighting impacts are "expected" to be reduced to insignificant levels. This finding seems tenuous at best since it is speculative and not based on any factual evidence.

From a visual perspective, the fundamental difference between the existing and proposed plants is that the former is enclosed and the latter is not. This difference is noticeably absent in the

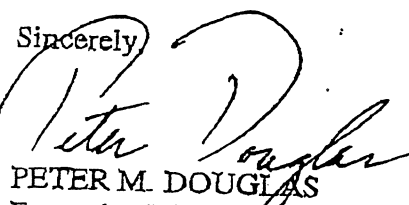
Mr. William Keese
November 5, 2001
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PSA's analysis for we are to assume that views of what amounts to a large concrete box can be compared to an industrial facility that appears synonymous to an oil refinery. The PSA even states that "...the light colors and rough texture of the [existing] power plant are generally compatible with the overall coastal character of the general landscape" (4.11-16). One questions whether these aesthetic features should be the project baseline. An adequate analysis of visual impacts, therefore, should include a comparison of similar structures.

Because aesthetic evaluation and interpretation is subject to a multitude of reactions and opinions and cannot always be reduced to a scientific discipline, a full range of options and alternatives should be presented for public review, especially on this unique stretch of California coastline. We therefore request that your staff evaluate a fully enclosed facility or other visual screening devices for public review in the Final Staff Assessment.

Thank you for the opportunity to comment on this important project. Please contact Dan Chia at 415/904-5248, Alison Dettmer at 415/904-5205, or myself if you have any questions or concerns.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: Gary Fay, CEC, Hearing Officer (via fax 916/654-3882)
Kae Lewis, CEC, Project Manager (via fax 916/654-3882)
Greg Fuz, City of Morro Bay (via fax 805/772-6268)
Andy Trump, Duke Energy (via fax 510/251-6805)



DOCKET	
00-AFC-12	
DATE	NOV 20 2001
RECD.	NOV 28 2001

November 20, 2001

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105

Dear Peter.

I am responding to your letter to the California Energy Commission (CEC), dated November 5, 2001, stating the Coastal Commission staff's concerns about certain visual aspects of the Morro Bay Modernization Project ("the Project"). Duke Energy (Duke) believes your November 5th letter reflects important misunderstandings regarding the visual impacts of the proposed project and the laws applicable to it.

The modernization project proposed by Duke will provide dramatic and substantial visual benefits to the coast of California, the residents of Morro Bay, and travelers along Highway 1. The Project will tear down three 450-foot stacks that, in some places, are visible for over ten miles away from the existing plant. It will also tear down a powerplant building that is 500 feet long, 300 feet deep, and 148 feet high. In fact, the entire modernized power plant, including the four stacks, will be no taller than the *building* of the current facility; the majority of the new plant will be substantially lower. Specifically, the new facility is 90 feet to the top of the HRSG, 110 feet to the top of the steel drums, and 145 feet to the top of the stacks— with the majority of the facility under 90 feet. The costs to tear down the existing facility are upward of \$40 million— contributing a sizable sum up front to mitigate any visual issues. This figure does not include the millions of dollars of cost and inherent value of additional property dedications and improvements facilitated by the plant tear down.

The modernized plant will be repositioned to a location on the property that also reduces visual impacts as compared to the existing environment (i.e., the baseline). As you may know, the CEC evaluated the Project from twenty key observation points (KOPs), (the most of any CEC applicant) including thirteen points that primarily capture the experiences of visitors to or travelers through the region. These KOPs were selected with the active participation of the City of Morro Bay. Seventeen of the twenty KOPs rated the Project as a significant improvement, including twelve of thirteen primarily affecting the coastal zone; one rated it as neutral; and only two rated it as negative, including only one perspective seen by visitors and travelers. Further evidence of the visual benefits of the Project are shown by comparing the significant number of people who currently see some part of the plant versus future conditions

where it will be removed from their viewshed in its entirety (not to mention the additional thousands that will not see the new plant from a variety of view corridors on the nearby highways). Duke strongly believes that the Project is not only consistent with the guidance of Section 30251 of the Coastal Act, but that its construction will actually restore and enhance views from virtually all coastal viewing areas.

Unfortunately, a reader of your letter would have had no idea that the Project has such dramatic, positive visual attributes. Of additional concern, however, is that one of your staff's proposed mitigations – a fully enclosed facility – would have serious negative visual consequences for the coast and its residents. A fully enclosed facility would create a solid, visually impenetrable structure— similar to what exists today. The height of a fully enclosed new structure itself would require that the stacks of the facility be raised a corresponding height. The increased bulk and height from the building would block additional views from several residential areas, including views of Morro Rock.¹

Duke is interested in minimizing the visual profile of the new facility as much as is reasonable notwithstanding the absence of any potential adverse impacts within the meaning of the California Environmental Quality Act and other statutes. Accordingly, Duke has proposed a variety of measures aimed at minimizing the isolated visual impacts of the Project from KOPs 5, 6, and 7. For example, Duke has proposed on-site landscape screening with large plant materials, off-site landscaping consistent with ESH requirements, and a color palette to blend with the surroundings to minimize any impacts.

As you know, the CEC's staff's next document, the Final Staff Assessment, was released on November 15. The CEC staff responded to several of your staff's concerns in the FSA and noted in several areas the significant benefits of tearing down the existing facility. The FSA will serve as the basis of evidentiary hearings at which all parties can review all aspects of the Project.

We found several other statements in the staff's letter troubling. First, there is an inference that a full enclosure would be better for travelers along Highway 1, given the highway's historic stature. In fact, the new facility will be much less apparent from Highway 1 than the current facility. Second, there is the suggestion that the baseline for environmental comparison should be the natural state of the coast, even though that is plainly contrary to long-established legal principles under CEQA and CEC

¹ Another alternative to the proposed Project advocated by your staff during these proceedings— dry cooling towers for discharge water —also would have substantial negative visual impacts. A dry cooling alternative would require a solid wall of fans, tanks, and bracing approximately covering approximately 60,000 square feet of the site and at least 110 feet in height. This would be the equivalent area of a football field that is eleven stories high.

guidelines. (See CEQA Guidelines sections 15125(a)² and 15126.6(a); *see also* EPIC v. *County of El Dorado*, (3d. Dist 1982) 131 Cal.App.3d 350, 352. Consistent with this law, the Energy Commission has ordered that the staff "include in its FSA a biological analysis that assumes, as a baseline, the existing physical conditions in the affected area, as required by CEQA [citation omitted]." [Committee Order dated August 22, 2001].)

Third, there is the suggestion that interested parties would not have a chance to review possible alternative ways to minimize the visual impacts of the Project before certification. This statement is puzzling, as your staff knew that the City of Morro Bay was holding a workshop on visual issues (one of numerous workshops on visual issues held by Duke during the past two years) the very day their letter was sent to the CEC.

I would also like to comment on your references to Metcalf and other projects that are "disguising" their projects with enclosures. The Metcalf project proposed this mitigation because it is a "greenfield" site where the new structure has a clear negative impact compared to the existing environment and, more importantly, to make the project fit in with the proposed "campus industrial" development to be located immediately adjacent. In the case of the other proposal, Russell City, the developer has proposed a "celebrate the plant" enclosure which makes it arguably more visible and which is controversial for that reason. Duke strongly believes— and reached agreement with the City on this point long ago— that the appropriate philosophy for visual impacts at Morro Bay is to make the plant as unobtrusive as possible. Hence the Duke proposal to spend tens of millions to dismantle the existing structure and put in a much smaller one located further from the waterfront. Any enclosure, and certainly anything resembling Metcalf or Russell City, would make the plant more intrusive and is contrary to this basic philosophy that will help improve views on Morro Rock.

Finally, with respect to process, Duke has appreciated the direct and constructive back and forth that has generally characterized our interactions with your staff. We fully expect there will be areas that we disagree on the facts or potential solutions. Duke hopes you personally believe that early and constructive dialogue has considerable merit and we ask you and your staff to explore potential differences directly with us.

²That section states:

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant..."

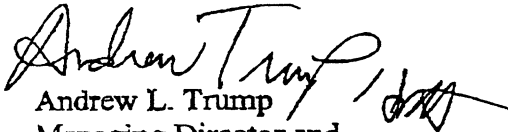
Mr. Peter Douglas
CCC Visual Concerns about MBPP Modernization Project
November 20, 2001

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After you have had a chance to review this letter with your staff, Duke requests an opportunity to meet with you to review this subject and discuss those areas where we hopefully have reached a meeting of the minds – such as the Project's coastal access program – and those on which we still might have differences. Dan Chia and Kirk Marckwald have tentatively identified 3-4 PM on Wednesday, November 28th as a time that would work on both of our schedules. I hope to see you then.

Please contact me at 510-251-6811 if you would like to discuss any aspects of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew L. Trump", with a stylized flourish at the end.

Andrew L. Trump
Managing Director and
Morro Bay Modernization Project Team Leader

cc. Mr. William Keese, California Energy Commission

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:)	Docket No. 00-AFC-12
)	
Application for Certification)	NOTICE OF FIRST SET OF EVIDENTIARY
of Duke Energy for the)	HEARINGS and INITIAL HEARING ORDER
Morro Bay Power Plant Project)	-and- NOTICE OF SCHEDULING
)	CONFERENCE
_____)	

I. BACKGROUND

The Committee has considered the progress made in developing relevant information in this case, and the representations of the parties at the November 29, 2001 Prehearing Conference. We have balanced all competing considerations in what we view to be a reasonable manner, and will therefore commence evidentiary hearings as specified below. **The hearing and filing dates in this Notice and Order pertain to only the topic areas reflected in ATTACHMENT A. These topic areas may be referred to as "GROUP I". We will issue a subsequent Notice and Order containing filing and hearing dates for the "GROUP II" (Land Use, Noise and Vibration, Traffic and Transportation, Waste Management, Hazardous Materials/Worker Safety, Socioeconomics, Air Quality, Public Health) topic areas and for the "GROUP III" (Biological Resources, Visual Resources, Cultural Resources, Soil and Water Resources, Alternatives) areas after the Scheduling Conference noticed below.**

The parties should further note that scheduling discussions on the "Group II" and "Group III" topic areas will be held following conclusion of the evidentiary presentations at the December 17, 2001 session scheduled below.

II. NOTICE OF EVIDENTIARY HEARINGS

We will conduct formal evidentiary hearings as follows:

MONDAY, DECEMBER 17, 2001
Session beginning at 10:00 a.m. at
1055 Morro Ave
Morro Bay, CA 93442
[Wheelchair Accessible]

and continuing to TUESDAY, DECEMBER 18, 2001
at 10:00 a.m. if necessary.

TOPICS MAY BE CONTINUED FROM ONE DAY TO THE NEXT AS NECESSARY

At the evidentiary hearings, the parties (Applicant, Staff, Intervenor) will present evidence consisting of sworn testimony and exhibits on each topic area. Presentations will follow the agenda reflected in ATTACHMENT A.

Parties should be aware that additional evidentiary hearings will be held in the January 24-30, 2002 time frame for the topic areas characterized as "GROUP II" and likely in February 2002 for the "Group III" areas. We will schedule the topics, locations, and filing dates for these hearings in subsequent notices.

A. Formal Evidentiary Hearing Procedures

The purpose of these formal evidentiary hearings is to establish the factual record necessary to reach a decision in this case. This is done through the taking of written and oral testimony as well as exhibits from the parties. These hearings are more structured than the Committee Conferences and the informal Staff workshops which have already occurred. A party proposing to sponsor witnesses must file a written version of the witnesses' testimony and a statement of the witnesses' qualifications to testify upon the topic area(s) according to the schedule below. Witnesses will testify under oath or affirmation and be subject to cross-examination by other parties who have intervened in the case. Parties intending to offer documentary exhibits (including declarations) as evidence (other than the Staff Assessment, the Application for Certification document, or portions of either) shall also include a copy of such materials with their written testimony.

At the evidentiary hearings, a party sponsoring a witness shall briefly establish the witness' qualifications and have the witness orally summarize the prepared testimony before requesting that the testimony be moved into evidence. Relevant exhibits may be offered into evidence at that time as well. At the conclusion of a witness' direct testimony, the Committee will provide the other parties an opportunity for cross-examination, followed by redirect and recross examination as appropriate. Declarations on a particular topic area will be received only if there are no credible objections by the other parties.

Parties are encouraged to consolidate presentations by witnesses and/or cross-examination to the greatest extent possible in order to minimize duplication and conserve hearing time.

FAILURE TO PRESENT WITNESSES AS SCHEDULED, OR TO CROSS-EXAMINE ON THE TOPICS AS SCHEDULED, CAN CONSTITUTE A WAIVER OF THESE RIGHTS.

B. Public Participation

Members of the public and interested governmental agencies are invited to attend these hearings, and may offer unsworn public comment upon the matters discussed. These public comments will be entered into the record of the proceeding and may be used to supplement or explain the evidence of record. Public comments by

themselves, however, are not sufficient to support a finding of fact or a decision on an issue.

Public comment at the evidentiary hearings may be restricted to only specified matters covered at the hearing. Comment of a general nature may be limited as time permits.

The Commission's Public Adviser, Roberta Mendonca, is available to provide information or to assist those interested in participating at these hearings. She may be reached at (916) 654-4489 or, toll free, at 1-800-822-6228; her e-mail address is: pao@energy.state.ca.us

C. Further Information

If you require special accommodations, contact Priscilla Ross at (916) 653-6631 at least five days prior to the hearing(s) you wish to attend. News media inquiries should be directed to Assistant Director, Claudia Chandler at (916) 654-4989, or e-mail: energia@energy.state.ca.gov

Kae Lewis, the Commission's Project Manager, will respond to technical questions concerning the Morro Bay Power Plant Project at (916) 654-4176, or by e-mail at: klewis@energy.state.ca.us Information concerning the status of the project, as well as notices and other relevant documents, is also available on the Energy Commission's Internet home page at: www.energy.ca.gov/sitingcases/morrobay/index.html

Questions of a legal or procedural nature should be directed to the Hearing Officer, Gary Fay at (916) 654-3893 or, if Mr. Fay is unavailable, to Stanley W. Valkosky at the same number.

III. HEARING ORDER

The following filing schedule shall apply for the first set of evidentiary hearings in December 2001.

Submittals shall be served upon all parties to this proceeding and one original and eleven (11) copies to the Commission's Docket Unit, MS-4, 1516 Ninth Street, Sacramento, CA 95814. Each party is responsible for ensuring that its respective submissions are received no later than 3:00 p.m. on the dates indicated. Identify all documents with "Docket No. 00-AFC-12."

DATE	EVENT
December 11, 2001	All parties serve and file declarations and prepared testimony and exhibits for Topic Areas scheduled for hearing on December 17, 2001
December 14, 2001	Staff files Part 2 of the Final Staff Assessment covering areas of Cultural Resources, Soil and Water Resources, and Land Use

December 17, 2001 (continuing to December 18, if necessary)	Evidentiary Hearing on Topic Areas (Group I) identified in Attachment A, followed by Scheduling Conference
January 3, 2002	Parties file Opening Briefs on Group I Topics
January 10, 2002	Parties file Reply Briefs on Group I Topics

IV. SCHEDULING CONFERENCE

NOTICE is hereby given that matters pertinent to the "Group II" (Noise and Vibration, Traffic and Transportation, Waste Management, Hazardous Materials/Worker Safety, Socioeconomics, Public Health, Air Quality, Land Use) and "Group III" (Biological Resources, Cultural Resources, Visual Resources, Soil and Water Resources, Alternatives) topics will be discussed following conclusion of the December 17, 2001 Evidentiary Hearing. At the discretion of the Committee, discussion on these matters may be continued to December 18, 2001, beginning at 10:00 a.m., at the same location as the evidentiary hearing.

The purposes of this discussion are the same as those specified in the November 9, 2001 Notice of Prehearing Conference. The difference is that discussions will be limited to the topics identified above and related matters. Parties need not file additional Statements. Parties desiring to participate at hearings on these topics shall be prepared to identify any proposed witnesses, the nature of direct testimony, the time required for direct examination, the time desired for cross-examination and the nature thereof, and related matters.

Parties shall also be prepared to update the Committee on the progress in obtaining necessary information and performing any additional analysis on matters pertinent to any of the "Group II" or "Group III" topics. This shall specifically include the time required to prepare Applicant's analysis of the feasibility of visually enclosing the proposed facility, as well as the time required for review of such analysis, or the time required to prepare an independent analysis by Staff.

Dated: December 4, 2001

MICHAL C. MOORE
Commissioner and Presiding Member
Morro Bay AFC Committee

WILLIAM J. KEESE
Chairman and Associate Member
Morro Bay AFC Committee

ATTACHMENT A
TOPIC and WITNESS SCHEDULE
December 17, 2001 - EVIDENTIARY HEARING
(Topics may be continued to December 18, 2001 if necessary)

TOPIC	WITNESSES (Direct Testimony)	CROSS EXAMINATION
Facility Design	<ul style="list-style-type: none"> • Applicant: Declaration • Staff: Declaration 	<ul style="list-style-type: none"> • NONE
Reliability	<ul style="list-style-type: none"> • Applicant: Declaration • Staff: Declaration 	<ul style="list-style-type: none"> • NONE
Geology and Paleontology	<ul style="list-style-type: none"> • Applicant: Declaration • Staff: Declaration 	<ul style="list-style-type: none"> • NONE
Project Description	<ul style="list-style-type: none"> • Applicant: Trump/Cochran • Staff: Lewis • City: unidentified 	<ul style="list-style-type: none"> • Applicant • Staff • CAPE • City
Compliance	<ul style="list-style-type: none"> • Applicant: Trump/Hoffman • Staff: Bruins • CAPE: unidentified • City: unidentified 	<ul style="list-style-type: none"> • Applicant • Staff • CAPE • City
Efficiency	<ul style="list-style-type: none"> • Applicant: Poquette/Cochran • Staff: Baker/Minetto 	<ul style="list-style-type: none"> • CAPE
Transmission Line Safety and Nuisance	<ul style="list-style-type: none"> • Applicant: Barreno/Wybuerala • Staff: Odoemelam 	<ul style="list-style-type: none"> • CAPE
Transmission System Engineering	<ul style="list-style-type: none"> • Applicant: Barreno/Wybuerala • Staff: Minetto/Ng • CAPE: Boatman 	<ul style="list-style-type: none"> • Applicant • Staff • CAPE

Corrections to these items and/or witnesses shall be submitted to the Hearing Officer no later than Wednesday, December 12, 2001.